



December 29, 1999

Ms. J. Middlebrooks
Assistant City Attorney
City of Dallas
2014 Main, Room 501
Dallas, Texas 75201

OR99-3809

Dear Ms. Middlebrooks:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 130757.

The Dallas Police Department (the “department”) received a written request for records pertaining to a particular internal affairs investigation. You state that most of the requested records will be released. You seek to withhold, however, certain portions of the IAD file pursuant to sections 552.101 and 552.117 of the Government Code.

Section 552.101 protects “information considered to be confidential by law, either constitutional, statutory, or by judicial decision,” including information coming within the common-law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common-law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85. We have reviewed the information you seek to withhold under section 552.101 and agree that the information you have marked meets the standard for common-law privacy protection. The department, therefore, must withhold this information pursuant to section 552.101.

The documents you submitted to this office also contain information protected under section 552.117(1) of the Government Code, which requires that the department withhold the home addresses, home telephone numbers, and social security numbers of city employees, as well as information revealing whether the employees have family members. Accordingly, the department must redact these types of information from the records at issue, but only if the employee had elected to keep this information confidential in accordance with section

552.024 of the Government Code. Assuming the relevant employees made such an election prior to the department's receipt of the open records request, we conclude that these types of information must be withheld.¹ See Open Records Decision No. 530 (1989).² Because you raise no other exception to required public disclosure, the remaining information at issue must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

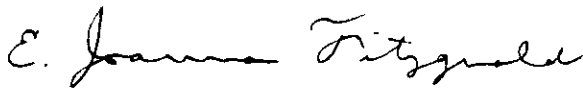
¹We have marked additional information that comes under the protection of section 552.117.

²However, even if such an election had not been made, we note that section 552.117(2) requires that the department withhold the same categories of information pertaining to "a peace officer as defined by Article 2.12, Code of Criminal Procedure." Unlike other public employees, a peace officer need not affirmatively claim confidentiality for this information. Open Records Decision No. 488 (1988); see also Open Records Decision No. 506 (1988).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/RWP/nc

Ref.: ID# 130757

cc: Mr. Todd Bensman
The Dallas Morning News
P.O. Box 655237
Dallas, Texas 75265
(w/o enclosures)